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**From:** Gline, Gerald  
**Sent:** Thur 6/22/2017 5:27:48 PM  
**Subject:** RE: Diamond Alkali [IWOV-CSDOCS.FID1779324]

Mr. Fajardo, thank you for taking time yesterday to discuss my comments to the revised cash out proposal sent to me along with your letter of June 20, 2017. I appreciate the EPA's willingness to address our concerns and adopt changes which the EPA believes addresses those concerns.

We appreciate that the EPA is prepared to carve out our contractual and indemnification claims against the Palin entities as reflected in paragraph 37. Based upon our discussion it is my understanding that the EPA believes that carving out contractual claims in Paragraph 37 not only means that DPC is not waiving them, but that the Palin Entities would not be able to interpose a defense to the claims based upon the contribution protections provided to them in paragraph 39 ( should they agree to participate in the cash out settlement ).

You indicated that the EPA has addressed similar issues in other settlements and this is consistent with the EPA's practices and procedures. If you have any writing procedures on this which you could share , I would appreciate that.

You indicated that it is the EPA's position that as redrafted the settlement would not impact these claims. While I appreciate that is the EPA's position and the intent in drafting the agreement ( and it is certainly the intent of the DPC Settling Parties ), I believe that the agreement could be read differently by Palin. The additional language I proposed be added to paragraph 39 in my April 19<sup>th</sup> letter would avoid any ambiguity by making clear that the contribution protections provided to settling parties excludes such protections for the claims carved out in paragraph 37. I am proposing adding that language to paragraph 37, I would also be ok with adding language at the end of the last sentence in paragraph 37 which says "and such claims are not subject to contribution protections provided in paragraph 39".

With respect to the carve out in paragraph 37 I have two additional clarifications. First , as reflected in my April 19<sup>th</sup> letter , I requested that the exclusion also exclude any claims between the DPC Settling Parties. As I mentioned in one of our earlier conference calls, there are rights between the various DPC Settling Parties which are also not affected by the Cash Out Settlement. I mentioned that my firm represents the entire group with respect to the LPRSA in general and this settlement in particular. We cannot get involved in any issues between the various DPC Settling Parties. My language makes clear that the Cash Out Settlement does not

affect these rights and obligations.

As previously discussed , the Palin entities were the master lessee of the facility from my clients. The Palin entities in turn sublet the premises to other tenants. The Palin entity subtenants included American Modern Metals Co and various affiliated and related entities. ( AMMCO ). AMMCO went bankrupt. A final decree was entered closing out it bankruptcy in 2005. ( there were no distribution to creditors ). My clients have made claims against AMMCO's insurance carriers . We want to exclude these claims from the waiver of claims in paragraph 37 .

Accordingly , I would propose revision of the last sentence of paragraph 37 as follows:

“ This waiver also shall not apply to claims by and between the DPC Settling Parties and to the DPC Settling Parties contractual and indemnification claims against Palin Enterprises and its affiliated and related entities and individuals as wells its subtenants American Modern Metals Co and affiliated and related entities[ and all such claims are excluded from the contribution protections provided in paragraph 39].”

We also discussed clarification of the DPC Settling Parties as follows : “DiLorenzo Properties Company, a limited partnership , including is current and former partners; the Estates of Sol Goldman , Irving Goldman , Alex DiLorenzo Jr. and Alex DiLorenzo III; and Goldlex Holding Company and GHC in Liquidation , partnerships between the Estate of , Irving Goldman and DiLorenzo Properties Company.” You were going to get back to me on my request to specify that the this includes both past and present partners of DiLorenzo Properties Company.

Finally , as discussed , in an email date April 20 , 2017 I gave you a more accurate description of the Facility Covered by the Settlement for Appendix A. We would like that description on Appendix A.

I look forward to hearing from you on these requested clarifications. Thanks

**Cole Schotz P.C.**

**Gerald H. Gline**

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**From:** Fajardo, Juan [<mailto:Fajardo.Juan@epa.gov>]  
**Sent:** Wednesday, June 21, 2017 4:41 PM  
**To:** Gline, Gerald  
**Subject:** RE: Diamond Alkali [IWOV-CSDOCS.FID1779324]

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**From:** Gline, Gerald [<mailto:GGline@coleschotz.com>]  
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**Subject:** RE: Diamond Alkali [IWOV-CSDOCS.FID1779324]

Do you have time to discuss this further now ?

# Cole Schotz P.C.

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**From:** Fajardo, Juan [<mailto:Fajardo.Juan@epa.gov>]  
**Sent:** Wednesday, June 21, 2017 4:33 PM  
**To:** Gline, Gerald  
**Subject:** Diamond Alkali

“each Settling Party agrees not to assert any claims, and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have, for response costs relating to the lower 8.3 miles of the Lower Passaic River, which is OU2 for the Site, against each other or any other person who is a potentially responsible party under CERCLA with respect to OU2 for the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to OU2 for the Site against such Settling Party. This waiver also shall not apply to the DPC Settling Party’s contractual indemnification claims against Palin Enterprises and its affiliates and related entities and individuals.”

The paragraph begins with each settling party agreeing not to assert any claim and to waive all claims, and ends by stating that the waiver does not apply to DPC’s contractual indemnification claims against Palin. There is therefore no need to modify the first sentence in the contribution paragraph to cross-reference the exclusion because it’s already excluded in the opening clause of the contribution paragraph: Except as provided in Paragraph 37 (waiver of claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement.

In addition, the indemnification agreement doesn’t need to be excluded from the contribution protection provision because contribution protection is different from contractual indemnification. Statutory contribution protection does not bar a contractual indemnification claim.

Juan

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